

**Written Testimony of
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Energy and Commerce Committee
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Mr. Chairman, ranking member Stearns and members of the Committee, my name is Derek Chang and I am the Executive Vice President, Content Strategy and Development, at DIRECTV, Inc. Thank you for inviting me to testify today on consumers' access to sports programming.

DIRECTV continually strives to offer more sports programming and programming-related innovations to our subscribers. This improves competition in the entire multi-channel video marketplace. We carry nearly every regional sports network (RSN) made available to us and we carry all but one of these RSNs on our most widely distributed programming tier. DIRECTV offers subscribers more live HD sporting events than any other provider. We bid on, and carry, virtually every sports package of additional, out-of-market professional games from the NHL and NBA to international soccer.

In addition to providing more sports content to our subscribers, we also strive to add value to much of the sports programming that we carry. The introduction of cutting-edge innovations and features has been critical to our ability to grow and

survive in the increasingly competitive multi-channel video marketplace. For example, nearly all multi-channel video programming distributors (“MVPDs”) carry the YES Network. But only DIRECTV has partnered with the channel to add bonus camera angles and interactive statistics for our subscribers. Similarly, DIRECTV outbid the cable consortium iN DEMAND for exclusive supplemental NASCAR coverage last year. For years the cable industry had carried this unique programming but did little with it. DIRECTV immediately added multiple camera angles, real-time stats, team audio and dedicated announcers. In only its first year, NASCAR HotPass has more than six times the subscribers than when the cable industry had the rights to this programming. All of this is a critical component of DIRECTV’s success. Obtaining the widest range of sports programming made available to DIRECTV in the marketplace, and adding value and consumer friendly features to that programming, is precisely how DIRECTV has been able to compete and grow.

Today, our cable and phone company competitors have responded to our leadership and innovations in sports programming with unique product offerings of their own. This includes on-demand sports highlights and footage, but it also includes the highly successful package of bundled video, phone and broadband access, among others. Dish Network has responded by focusing on lower price offerings and providing numerous exclusive 2nd language channels.

These types of battles between multiple competitors offering differentiated products and alternatives are exactly what Congress envisioned. Accordingly, we think the marketplace is working on behalf of consumers to ensure fair and equal access to critical sports content.

This success is in large part due to the actions of Congress and the ongoing vigilance of the Federal Communications Commission (“FCC”) to guarantee such access. In 1992, Mr. Markey and members of this Committee led the charge to provide consumers with greater access to cable-controlled programming by enacting narrowly crafted program access provisions of the Cable Act. Congress recognized that new entrants need programming to survive, and that incumbent cable operators had sufficient market power to “kill competition” by withholding key vertically integrated programming. At the same time, Congress also recognized the value of exclusives – especially when obtained fairly in the marketplace by those seeking to compete against vertically integrated cable companies with dominant market share. Congress thus restricted only incumbent cable operators’ exclusive arrangements with programmers they owned.¹ It allowed other exclusives that would promote competition and serve the public interest.

¹ Although DIRECTV shares none of the characteristics of dominant cable operators, we have nonetheless voluntarily agreed in connection with recent transfers of control to be bound by the same rules that apply to them.

The 1992 Cable Act kick started competition in the video marketplace. In large part because of the program access provisions, DIRECTV was able to provide the first real competitive choice to the incumbent cable operators. The statute gave DIRECTV and other emerging competitors access to must-have programming that cable competitors would otherwise have withheld, but also permitted DIRECTV to differentiate itself through exclusive deals negotiated at arm's length with independent programmers, such as The NFL Sunday Ticket and, more recently, the NASCAR HotPass. The end result: precisely what Congress envisioned – a vibrant competitive marketplace with more choice and better service for consumers.

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I. DIRECTV provides more sports, more HD, and more innovative award winning sport programming and features than any cable or satellite provider.

DIRECTV has invested billions of dollars over the past three years to vault the company and our subscribers to the front of the high definition content line.

That investment and vision has allowed us to broadcast more HD sports programming than any other cable or satellite provider. From fly fishing to fencing, our HD sports offerings are unrivaled.

DIRECTV carries 29 RSNs with the 30th, the Mountain Channel (college sports programming from the Mountain West Athletic Conference), set to launch before the fall sports season. All but one of these are available on our most widely distributed tier of programming reaching the largest number of our subscribers, and 28 are offered in HD.

In addition to RSNs, we have successfully secured the rights to more out-of-market sport subscription packages than any of our competitors, including: NFL Sunday Ticket, NBA League Pass, MLB Extra Innings, NHL Center Ice, NCAA Mega March Madness, ESPN Full Court, ESPN GamePlan, MLS Direct Kick, and CricketTicket. Six of these are offered in HD. We also carry national sports channels like the Golf Channel, a suite of 6 ESPN channels, NHL Channel, NBA Channel, NFL Channel, Setanta Sports, Speed Channel, The Outdoor Channel, and Versus. 14 of these are offered in HD. And, of course, we offer the local and

national feeds of the networks, including Spanish language networks, to the vast majority of our subscribers.

But our leadership in sports is not just about carrying more sports than our competitors. It is also about innovating and creating new sports content through our investment and ingenuity. DIRECTV offers a dynamic sports mix channel that features 8 different live sports channels that can be viewed at once and that allow a subscriber to tune directly to the primary channel by clicking on the small picture. The NASCAR HotPass offers multiple camera angles, constant coverage of four drivers in HD each week at every NASCAR race, and the audio and telemetry of 13 different drivers all while the race is going on over the primary network broadcast. Working in conjunction with the Masters and CBS, DIRECTV will for the first time offer HD bonus coverage of particular holes at Augusta National Golf Course and up-to-the-minute statistics and leader boards. Countless other award winning innovations that bring the passionate sports fan closer to his or her game and maximize their viewing experience abound, from “pitcher cams” to “bracket trackers” to “red zone channels” and “strike zone channels” that take the viewer to live cut-ins of games throughout the country as they happen.

This is not simply good news for DIRECTV’s subscribers. This programming, and these innovations, forces our competitors to respond in the marketplace.

Some do so through their own innovations. Others do so through bundled offerings. Others do so by cutting prices. Increased competition translates into more consumer choices, better customer service, more responsive pricing and the technological innovation described above. Because of the competitive video marketplace, *all* Americans – not just DIRECTV subscribers – are enjoying a better television experience.

II. The Program Access Provisions of the 1992 Cable Act are largely responsible for competition in the MVPD marketplace.

DIRECTV's leadership in sports programming, and the technical enhancements it has added to that programming, would not have happened without fair access to the underlying content - access that would not exist but for the program access provisions of the 1992 Cable Act. In fact, without those provisions, satellite television and competition to cable would never have gotten off the ground.

The point of these provisions was to ensure that new entrants challenging the cable monopoly had access to the programming they needed to do so. More specifically, Congress sought to:

increas[e] competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such

programming, and to spur the development of communications technologies.²

Indeed, “the conferees expect[ed] the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies.”³ Congress hoped that competitors like DIRECTV, who sought to compete with the incumbent cable operators, could do so on the merits of their offerings, and consumers would benefit from their efforts to win customers from each other.

Congress thus required certain programmers owned by cable operators to make their programming available to all at nondiscriminatory rates and terms. By doing so, Congress specifically “placed a higher value on new competitive entry than on the continuation of exclusive distribution practices that impede this entry.”⁴

Yet, Congress treaded carefully when adopting the program access provisions – and rightfully so. It did not prohibit *all* exclusive arrangements. It instead

² 47 USC 548(a).

³ House Committee on Energy and Commerce, H.R. Rep. No. 102-862 (Conference Report), 102d Cong., 2d Sess. (1992), *reprinted at* Cong. Rec. H 8308 (Sept. 14, 1992).

⁴ *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992/ Development of Competition and Diversity in Video Programming Distribution and Carriage*, First Report and Order, 8 FCC 3359, 3384 (1993).

sought to encourage the development of unique product offerings, such as local news.⁵ And, because it was principally concerned about the abuse of market power, it only prohibited exclusive contracts by dominant cable operators for vertically integrated programming.

In carefully tailoring its program access rules, Congress recognized that exclusive contracts could be a valuable tool to enhance the competitive viability of new entrants. As Representative Tauzin noted during debate on the House floor, “exclusive programming that is not designed to kill the competition is still permitted . . .”⁶ Thus, where a new entrant seeks to obtain exclusive programming to increase competition, the program access rules permit it to do so. And even a cable operator is free to bargain for exclusivity to differentiate its service – so long as it does so on a level playing field with a non-cable-affiliated programmer.

The program access rules thus work exactly the way Congress intended them to. They enable satellite operators and other new entrants to provide viewers with

⁵ When Congress was drafting the program access provisions in 1992, it wanted to allow exclusive deals for local cable news channels. The idea was that, if a cable system spends a lot of money creating a local cable news channel; it shouldn’t have to make that channel available to its competitors. At the time, local cable news was primarily delivered to cable headends over telephone wires. Other programming (such as ESPN, CNN, etc.) was delivered to cable headends via satellite. So Congress decided to restrict exclusive contracts only for “*satellite* cable programming” (that is, “video programming which is transmitted by satellite.”).

⁶ 138 Cong. Rec. H6534 (daily ed. July 23, 1992).

“must-have” programming that cable would otherwise keep for itself. Yet, they allow all video distributors to provide a differentiated product that spurs competition.

III. The NFL Sunday Ticket was precisely the type of exclusive deal envisioned by the program access provisions to spur competition.

Perhaps the best example of an exclusive arrangement helping – not harming – competition is The NFL Sunday Ticket. DIRECTV, as a new entrant was able to get a foot in the door of the highly concentrated multi-channel video market in part by offering unique content such as The NFL Sunday Ticket. This and other unique offerings helped DIRECTV to differentiate itself and gain market share. The cable industry in turn, found itself forced to innovate and become more responsive to customer concerns. As a result, today cable offers a competitive, attractive package that includes its own differentiated video-on-demand and bundled Internet offerings. This is exactly what Congress had in mind when it enacted the program access provisions.

The NFL Sunday Ticket has helped DIRECTV emerge as a competitor to cable. It is critical to note that DIRECTV’s offering of the NFL Sunday Ticket does not prevent NFL fans from seeing their home teams. Local fans still get to see their teams through their local broadcast network, a right that DIRECTV believes is a

fundamental part of America's sports culture.⁷ Unfortunately, the same cannot be said of some cable operators who are withholding vertically integrated sports. The most well-known example is Philadelphia, where the incumbent cable provider, Comcast, denies access to Comcast SportsNet to DBS competitors. As a result, fans who wish to see the home teams play, including the Philadelphia Flyers, Phillies and 76ers, have no choice but to subscribe to Comcast. That sort of denial of access to "must-have" local content – as opposed to the out-of-market premium content offered by DIRECTV – is precisely the sort of threat to competition that Congress sought to prevent. Indeed, Comcast's anti-competitive practice is having its intended effect: the FCC recently found that "the percentage of television households that subscribe to DBS service in Philadelphia is 40% below what would otherwise be expected given the characteristics of the market."⁸ Likewise, DIRECTV's market share in the San Diego DMA is practically half the national average due to the local incumbent cable providers' denial of access to the home teams' games.

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⁷ Although DIRECTV has no firsthand knowledge of the NFL's broadcast contracts, it is our understanding that these contracts are structured in such a way that Sunday Ticket preserves the ability of the NFL to offer the vast majority of games on free, over the air television.

⁸ *Application for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation to Time Warner Cable, Inc.; Adelphia Communications Corporation to Comcast Corporation; Comcast Corporation to Time Warner Inc.; Time Warner Inc. to Comcast Corporation*, FCC 06-105 (rel. July 21, 2006), ¶ 149.

A key development in the American economy over the past twenty years has been the rise of a competitive video marketplace. Today, competition means: consumers have more choices than ever before; customer service and pricing are becoming more responsive; technological innovation is flourishing; and tens of thousands of jobs have been created.

This is no accident. Rather, it is the direct result of policies that Congress and this Committee have enacted to promote competition. In the MVPD marketplace today, consumers are courted by multiple providers offering different and unique services surrounding a core package of video programming.

Our cable competitors still possess an overwhelming market share, which can distort competition to this day. But the fact remains that today there is competition where before there was none. This is the success story Congress – and this Committee, in particular – helped write.

Thank you once again for allowing me to testify. I would be happy to take any of your questions.